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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/767,777 | 01/30/2004 | Toshiyuki Hasegawa | 2244.0180000 | 5563 |
| 26111 | 7590 | 12/29/2005 | | |
| STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005 | | | | |
| | | | EXAMINER RESTIFO, JEFFREY J | |
| | | | ART UNIT 3618 | PAPER NUMBER |

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/767,777

Applicant(s)

HASEGAWA ET AL.

Examiner

Jeffrey J. Restifo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/30/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 1/30/04 has been considered by the examiner.

Claim Objections

Claims 10 and 11 are objected to because of the following informalities:

In claims 10 and 11, the limitation of "communication hole" should be changed to "communication port" as is introduced in claim 9.

Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3 and 9-14 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 and 7-13 of copending Application No. 10/731,247. Although the conflicting claims are not identical, they are not patentably distinct from each other because The instant application simply substitutes an "HST unit" for a "forward/rearward movement switching device unit", which are viewed as synonymous and therefore obvious.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Nemoto (US 6,637,294 B2).

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Nemoto discloses a frame structure of a vehicle comprising a hollow flywheel housing 11 with flywheel 2, hollow intermediate housing 12, transmission case 13, engine (not shown), and a hydrostatic transmission including variable displacement pump 20 and motor 30, wherein said flywheel housing is connected to said engine on one end and to the intermediate housing on the second end by means of flanges abutting against flanges of the intermediate housing, wherein said intermediate flanges also abuts a center section which supports the pump unit and shaft on a first side in side said flywheel housing and the motor unit and shaft on a second side inside the intermediate housing, wherein a main shaft 55 is connected to said pump and a propeller shaft 82 is connected to said motor, and a center plate (not numbered) separates said intermediate housing from said transmission case, as shown in figure 1.

With respect to claim 5, the structure of the variable displacement pump appears to be conventional and has been given little patentable weight because it is inherent in conventional pumps.

Claims 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Matsufuji (US 6,233,931 B1).

Matsufuji discloses a vehicle comprising a hydraulic fluid reservoir of an HST unit including an inner space with oil filter 46, main portion R1, filter portion 46a defined by a partition wall 10a, and communication port 120, as shown in figures 8-10 and recited in column 7, line 49-column 8, line 5.

With respect to claims 11 and 12, the port is substantially centered in the trans case.

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With respect to claim 12, the oil heater is not positively recited and the case of Matsufuji is capable of housing an oil heater and therefore inherently reads on the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsufuji (US 6,233,931 B1), as applied to claim 9, and in further view of Nemoto (US 6,637,294 B2).

Matsufuji does not disclose the housing structure of an HST unit. Nemoto discloses a frame structure of a vehicle comprising a hollow flywheel housing 11 with flywheel 2, hollow intermediate housing 12, transmission case 13, engine (not shown), and a hydrostatic transmission including variable displacement pump 20 and motor 30, wherein said flywheel housing is connected to said engine on one end and to the intermediate housing on the second end by means of flanges abutting against flanges of the intermediate housing, wherein said intermediate flanges also abuts a center section which supports the pump unit and shaft on a first side in side said flywheel housing and the motor unit and shaft on a second side inside the intermediate housing, wherein a main shaft 55 is connected to said pump and a propeller shaft 82 is connected to said

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motor, and a center plate (not numbered) separates said intermediate housing from said transmission case, as shown in figure 1. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the transmission of Matsufuji with the HST unit of Nemoto in order to power the vehicle hydraulically.

Allowable Subject Matter

Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

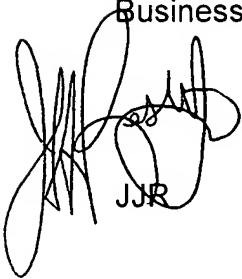
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey J. Restifo whose telephone number is (571)272-6697. The examiner can normally be reached on M-F 10-7.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (571)272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JJR